

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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THE TRAVELERS INDEMNITY COMPANY,

Plaintiff,

-against-

HISCOX INSURANCE COMPANY, INC.,

Defendant.

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COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, THE TRAVELERS INDEMNITY COMPANY (“Travelers”), and for its Complaint for Declaratory Judgment against Defendant, HISCOX INSURANCE COMPANY, INC. (“Hiscox”), alleges upon information and belief as follows:

Nature of the Action

1. In this action, Travelers seeks a declaration that Hiscox is obligated to defend and to indemnify Shawmut Design and Construction (“Shawmut”) in connection with an underlying action asserting a claim for property damage in connection with a renovation project on the second floor of 975 Madison Avenue, New York, NY 10075.

Parties

2. At all times relevant hereto, Travelers was and is a Connecticut corporation licensed and authorized to write insurance and conduct business in the State of New York with a principal place of business in Hartford, Connecticut.

3. Upon information and belief, at all times relevant hereto, Hiscox was and is an Illinois corporation licensed to conduct business in New York.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction due to diversity of citizenship and amounts in controversy in excess of \$75,000, exclusive of interests and costs, pursuant to 28 U.S.C. section 1332 and 28 U.S.C. Section 2201.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) in that a substantial part of the events giving rise to this claim occurred here.

6. An actual justiciable controversy exists between the parties as to the coverage afforded under the insurance policy issued by Defendant Hiscox.

7. Plaintiff Travelers has no adequate remedy at law.

Insurance Policies

8. Travelers issued to Shawmut a policy of Commercial General Liability insurance bearing policy number VTRX-CO-8206A920-IND-17 with effective dates of 11/1/17 to 11/1/18 (the “Travelers Policy”).

9. The Travelers Policy generally provides coverage for bodily injury or property damage that takes place during the policy period and is caused by an accident.

10. The Travelers Policy contains excess “other insurance” clauses that provide that coverage under the Travelers Policy is excess over any other coverage available to Shawmut as an additional insured.

11. Defendant Hiscox issued to The Pace Companies New York Inc. (“Pace”) a policy of Commercial General Liability insurance bearing policy number MPL1902055.17 with effective dates of 11/2/17 to 4/1/18 (the “Hiscox Policy”).

12. The Hiscox Policy generally provides, among other things, coverage for bodily injury or property damage that takes place during the policy period and is caused by an accident.

13. The Hiscox Policy contains an **Additional Insured – Owners, Lessees or**

Contractors – Completed Operations endorsement (E6839.1) which provides, in relevant part:

In consideration of the premium charged, and on the understanding this endorsement leaves all other terms, conditions, and exclusions unchanged, it is agreed the General Liability Coverage Part is amended as follows:

SCHEDULE

Name of Additional Insured Person(s) or Organizations Completed Operations	Location and Description of Completed Operations
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All entities or persons required by written contract to be included for coverage as additional insureds with respect to the operations performed by the **Named Insured** or by any person or entity on the **Named Insured's** behalf.

- I. Section III. Who is an insured, K. Additional insureds, is amended to include as an additional insured the persons or organizations shown in the Schedule above, but only with respect to liability for **bodily injury** or **property damage** caused, in whole or in part, by or arising out of **your work** at the location designated and described in the above Schedule performed for that additional insured and included in the **products-completed operations hazard**.

However, the insurance afforded to such additional insured:

1. only applies to the extent permitted by law; and
 2. will not be broader than **you** are required by the contract or agreement to provide for such additional insured.
- II. With respect to those additional insureds afforded coverage under this endorsement, the following is added to Section IV. Limits of liability:
If coverage provided to the additional insured is required by a contract or agreement, the most **we** will pay on behalf of the additional insured is the amount of insurance:
 1. required by the contract or agreement; or
 2. available under the applicable limits stated in the Declarations, whichever is less.

Background Facts

14. On February 1, 2016, Helly Nahmad Gallery Inc. (“Helly”) leased certain space located at 975 Madison Avenue, New York NY 10075 (“the Premises”) from the building’s owner, CTF Holdings Ltd (“CTF”).

15. At all relevant times, Helly was located on the second floor of the Premises and Bemelman’s Bar was located on the first floor.

16. On April 25, 2017, Helly hired Shawmut to serve as general contractor for a

renovation project at the Premises. At all relevant times, Shawmut was the general contractor for the renovation project.

17. By way of subcontracted dated July 6, 2017, Shawmut subcontracted with Pace in connection with the renovation project at the Premises (“the Pace Subcontract”).

18. The Pace Subcontract provides:

9. INSURANCE

Subcontractor shall obtain and maintain insurance from a responsible insurer with an A.M. Best rating of “A” or better and satisfactory to Contractor. Subcontractor’s insurance shall apply to any Subcontract Work furnished by or through Subcontractor for Contractor at any Project. All insurance carried by Subcontractor must provide at least the coverages and minimum limits required by the Contract Documents, but no less than the following:

19. The Pace Subcontract further provides:

E) Additional Insured Coverage (ISO form CG 20 10 (11/85 edition) or an endorsement providing equivalent coverage) naming Contractor, Owner, and any other parties required by the Contract Documents as additional insureds on a primary and non-contributory basis to any other insurance carried by the additional insureds, under Subcontractor’s General Liability (including completed operations), Auto Liability and Excess/Umbrella Liability coverages.

20. By way of Complaint dated January 22, 2021, Allianz Global Risks US Insurance Company (“Allianz”), as the subrogation insurer for CTF, initiated suit against Shawmut and Pace in the Supreme Court of the State of New York in the County of New York (“Underlying Action”).

21. In the Underlying Action, Allianz alleges that Pace installed, repaired, and/or otherwise serviced the sprinkler line as part of the renovation project at the Premises.

22. Allianz further alleges that, on January 24, 2018, the sprinkler line leaked and damaged the ceiling of Bemelman’s Bar below.

23. Allianz claims that the leak and subsequent property damage were caused by the improper and/or deficient connection between two sections of the sprinkler line that Pace installed as

part of the renovation project.

24. Allianz seeks \$130,636.00 in damages from Shawmut and Pace in the Underlying Action.

25. Travelers is defending Shawmut in the Underlying Action.

26. In the Underlying Action, Allianz seeks to recover for alleged property damage which was caused, in whole or in part, by or arising out of Pace's work on the renovation project.

Tenders to Hiscox

27. Shawmut qualifies as an additional insured under the Hiscox Policy.

28. By correspondence dated January 28, 2018, Travelers timely notified Hiscox of the alleged property damage and demanded that Hiscox acknowledge its obligation to defend and indemnify Shawmut as an additional insured under the Hiscox Policy.

29. By way of correspondence dated January 28, 2021, Travelers placed Hiscox on notice of the Underlying Action and renewed its demand that Hiscox defend and indemnify Shawmut as an additional insured under the Hiscox Policy.

30. Thereafter, by email dated July 13, 2021, Travelers again demanded that Hiscox defend and indemnify Shawmut as an additional insured under the Hiscox Policy.

31. To date, Hiscox has failed and refused to accept the defense and indemnification of Shawmut in connection with the Underlying Action.

32. Accordingly, Travelers seeks a declaration that Hiscox has an obligation to defend and indemnify Shawmut as an additional insured; that the coverage provided by the Hiscox Policy is primary; and that Travelers' obligation to Shawmut in the Underlying Action is excess to proper exhaustion and full payment of the limits of the Hiscox Policy.

33. In addition, Travelers seeks an award at law and equity against Hiscox for recovery of

all sums Travelers has incurred and continues to incur in the defense of Shawmut in the Underlying Action because the coverage provided by the Hiscox Policy is primary to any coverage provided by Travelers.

Claim for Declaratory Relief

Wherefore, Plaintiff Travelers respectfully requests that this Honorable Court issue a judgment as follows:

1. Declaring that the Hiscox Policy was in full force and effect on the date of the alleged property damage.
2. Declaring that all terms and conditions of the Hiscox Policy have been complied with and met.
3. Declaring that the alleged property damage and the Underlying Action fall within the coverage afforded by the Hiscox Policy.
4. Declaring that Hiscox owes a duty to defend Shawmut in connection with the Underlying Action.
5. Declaring that Hiscox owes a duty to indemnify Shawmut in connection with the Underlying Action.
6. Declaring that Hiscox's coverage obligation to Shawmut in connection with the Underlying Action is primary.
7. Declaring that Plaintiff Travelers' coverage obligation under the Travelers Policy is excess to those of Hiscox with respect to the Underlying Action.
8. Declaring that an actual controversy exists between Plaintiff Travelers and Defendant Hiscox with respect to Hiscox's duty to defend and indemnify Shawmut in connection with the Underlying Action.

9. Granting an award in favor of Plaintiff Travelers against Defendant Hiscox for all sums Travelers has paid in defending Shawmut as to the Underlying Action.
10. Granting such other and further relief as the Court may deem just and proper.

Dated: Hartford, Connecticut
November 22, 2022

RESPECTFULLY SUBMITTED:

PLAINTIFF
The Travelers Indemnity Company

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